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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION	Case No. 07-5944 SC MDL No. 1917
This Document Relates to: IN RE: APPLICATION FOR JUDICIAL ASSISTANCE FOR THE ISSUANCE OF SUBPOENAS PURSUANT TO 28 U.S.C. § 1782 TO OBTAIN DISCOVERY FOR USE IN A FOREIGN PROCEEDING Case No. CV-12-80-151 MISC	**DECLARATION OF MICHAEL W. SCARBOROUGH IN SUPPORT OF DEFENDANTS' AND SAVERI'S JOINT MOTION TO ADOPT SPECIAL MASTER'S REPORT AND RECOMMENDATION REGARDING SUBPOENA**

I, MICHAEL W. SCARBOROUGH, hereby declare:

1. I am an attorney licensed to practice law in the State of California and in the United States District Court for the Northern District of California. I am a partner with the firm of Sheppard, Mullin, Richter and Hampton LLP ("Sheppard Mullin"), counsel of record for defendants Samsung SDI America, Inc., Samsung SDI Co., Ltd., Samsung SDI (Malaysia) Sdn. Bhd., Samsung SDI Mexico S.A. de C.V., Samsung SDI Brasil Ltda., Shenzen Samsung SDI Co., Ltd., and Tianjin Samsung SDI Co., Ltd. in this matter. I make this declaration in support of Defendants' and Saveri & Saveri, Inc. ("Saveri")'s Joint Motion to Adopt the Special Master's October 22, 2012 Report and Recommendation to grant Defendants' Motion to Quash Sharp Corporation's Subpoena Pursuant to 28 U.S.C. § 1782 and to deny Sharp Corporation's Motion to Compel Saveri & Saveri, Inc. to Produce Certain Documents and Deposition Transcripts. If called as a witness, I could, and would, testify to the matters set forth in this declaration of my own personal knowledge.

2. The Special Master heard oral argument on September 20, 2012 regarding Defendants' Motion to Quash Sharp Corporation's Subpoena Pursuant to 28 U.S.C. § 1782 and to deny Sharp Corporation's Motion to Compel Saveri & Saveri, Inc. to Produce Certain Documents and Deposition Transcripts. Attached hereto as Exhibit "A" is a true and correct copy of the certified reporter's transcript of the September 20, 2012 proceedings before the Special Master.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

DATED: October 31, 2012

By *_/s/ Michael W. Scarborough_*
MICHAEL W. SCARBOROUGH

Exhibit A

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MASTER FILE NO. 07-CV-5944 SC

MDL NO. 1917

IN RE: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION

CASE NO. 07-CV-5944 SC

THIS DOCUMENT RELATES TO:

CASE NO. CV-12-80151 MISC

IN RE: APPLICATION FOR JUDICIAL ASSISTANCE FOR THE ISSUANCE OF SUBPOENAS PURSUANT TO 28 U.S.C. § 1782 TO OBTAIN DISCOVERY FOR USE IN A FOREIGN PROCEEDING

/

TRANSCRIPT OF PROCEEDINGS

SEPTEMBER 20, 2012

2:00 P.M.

2 EMBARCADERO, SUITE 1500

SAN FRANCISCO, CALIFORNIA

REPORTED BY:

RUBY SANCHEZ

CSR NO. 12971, RPR

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SAN FRANCISCO, CALIFORNIA

THURSDAY, SEPTEMBER 20, 2012, 2:00 P.M.

P R O C E E D I N G S

HON. LEGGE: Tell me your name please, sir.

MR. SEARBY: Yes. Searby, S-E-A-R-B-Y.

HON. LEGGE: Mr. Searby, you're in Washington.

MR. SEARBY: I'm in Washington with Paul Weiss.

HON. LEGGE: Yes. Okay. And you're the one that's going to be speaking today for Sharp.

MR. SEARBY: That's correct.

HON. LEGGE: We do have a lot of attorneys here in the conference room, so I'll ask them to state their appearances and then proceed with the hearing of our matters.

For identification purposes, we're here in the matter of the Cathode Ray Tube Antitrust Litigation in connection with a subpoena served on the law firm of Saveri and Saveri on August the 8th of this year, that has been followed by a motion by the defendants to quash that subpoena and then a motion by Sharp to compel production of the documents called for by the subpoena. So it is those two documents which is -- or two motions, I should say, which are before me today.

So I will, first of all, ask the moving opposing parties who are present to state their appearances, please.

MR. CUNNINGHAM: Good afternoon, your Honor. Tyler

Cunningham, Sheppard Mullin for the Samsung SDI defendants.

MR. SCARBOROUGH: Mike Scarborough also for the Samsung SDI defendants.

MR. RUSHING: Geoffrey Rushing on behalf of Saveri.

MR. SAVERI: Good afternoon, your Honor. Rick Saveri on behalf of the Saveri law firm.

HON. LEGGE: Mr. Searby, I don't know if you can hear that or not, but there's been appearance here on behalf of the defendants, the same firm and attorneys who wrote the briefs in connection with the motion and Saveri & Saveri is also represented here.

And others wish to make an appearance at this time?

MR. TALADAY: John Taladay on behalf of the Philips defendants.

MS. MAYO: Sharon Mayo of Arnold & Porter on behalf of the LGE defendants.

MR. EVERETT: Clay Everett on behalf of the Hitachi defendants.

MS. CHIU: Michelle Park Chiu on behalf of Hitachi defendants.

HON. LEGGE: I'm not sure you can hear all those names, Mr. Searby, but there are four other defendants who are present at the hearing although they have not been a direct party to the motions.

MR. SEARBY: Yes, your Honor.

HON. LEGGE: Are you with me to this point?
MR. SEARBY: Yes.
HON. LEGGE: We'll proceed ahead here then. And when other parties come to speak, we'll do our best to keep their voices up so you can hear us. In the event you cannot hear us, please let me know.
MR. SEARBY: Thank you.
HON. LEGGE: I think I should start out with how I personally got to this point and where my head is at the moment, so to speak.
First of all, I'm the Judge, Judicial Officer, who signed the subpoena at issue. It first came to me, of course, on ex parte basis and I had not had any prior experience with Section 1782. I did check the procedural requirements of that section. I didn't get into any of the jurisprudence that has developed around it, but just checked the procedural requirements to see whether the application for the subpoena was proper. I think if memory serves me, I found a couple of things I wasn't quite certain about and contacted somebody, I believe, at the Bingham McCutchen Firm and a clarification on the procedure and some additions, I forgot what they were, and did issue the subpoena.
Now, I did so wholly on the basis of the satisfaction of what I believe was satisfaction of the procedural requirements for the issuance of the subpoena and didn't deal with its merits

or its balancing of interests or its discretionary aspects of law. That, however, is what is now before me. I knew this day would be coming. It was absolutely inevitable from the scope of the subpoena.
So I have read the motions and have read the oppositions to the motion and in fairness want to tell all sides my initial reactions, as I said, where my head is.
It seems to me -- it struck me at the time and still strikes me, that there's an element of an unfairness about this subpoena and its intended uses. My position on that is after having read the briefs and without getting into the jurisprudence of Section 1782, it seems to me there's just something basically unfair to be in a case like we have here in this district where a lot of lawyers on both the defense side and plaintiff's side have spent several years participating in discovery and other procedures other than discovery, of course, also, and have put a lot of equity into this case, and the result from a discovery point of view is, I gather, has been over five million pages of paper. And that having done that, that a third party can come in and simply scoop it all up and take it off to a foreign jurisdiction, a foreign jurisdiction in which the subpoenaing party could not get that discovery because of the rules of that jurisdiction, so dump all this discovery on to that court and with no paying of dues is maybe what I should say. That somebody could sit back, take the advantage of all

the work that's been done and attempt to use it and that's that.
I think it's also unfair to a certain extent that the subpoena was served on the attorneys, because obviously what Sharp wants is not the plaintiff's documents. What Sharp wants is the documents of the defendants that they're suing in the Korean jurisdiction. And, also, I think a subpoena more properly had been addressed to particular defendants for the documents they want; not that that's even a valid consideration, but part of my view from 50,000 feet on the fairness level. But instead, the burden, at least initial burden, has been placed here on the plaintiffs for them to scoop up all of this discovery, package it up and neatly deliver it to some other plaintiff in some other jurisdiction for use in some other place. Now, that's my feeling on the general concept of fairness.
With that having been said, I realize that I have to delve into the jurisprudence under Section 1782 to analyze what it says, to analyze what the courts have said about it, analyze the restrictions, analyze the four factors under the Intel case, and I have not gotten to that point yet. I've read what you have to say, but I haven't sat down to really try to decipher and understand it and make an application here.
So that is where I am. I've certainly not made up my mind about it, but I find it was just simply fair to tell both sides what my initial view of the basic gut and fairness of the

matter looked to me at this time before doing the work that has to be done.
Now, that having been said, I guess the first motion that was filed here was the defendants' motion to quash. So I believe that I should turn to the defendants for their opening presentation before I turn to Sharp.
MR. CUNNINGHAM: Thank you, your Honor.
I'm going to speak mainly about the factors under the Intel case, but I think sort of -- there's a single question that cuts through most of the analysis here and that is whether Sharp's application is an attempt to circumvent the discovery limitations that Korea has put on litigants. And I think that the answer to that question is clearly it is. That answer follows directly from the facts here as told by Sharp itself.
And those facts are that Korea does allow document discovery, both from the parties and from third parties. That the discovery allowed is limited. Korea places limitations on documents available to litigants. I know that Sharp says that those limitations are so draconian that they can't get a single document in Korea. We think that's an overstatement and dispute that. But in any event, because of those limitations, Sharp has made no effort here to obtain discovery under Korean rules. I should say I think technically that's not an admission that Sharp has made, but we presented evidence to that effect and Sharp hasn't rebutted it. Fourthly and finally, because of

those limitations or perceived limitations, Sharp has proceeded with this application under 1782 in the first instance to this court, so its court of first resort is to U.S. District Court.

Well, your Honor, I think that that's circumvention. That's Sharp going around the obstacle in its path or the perceived obstacle in its path which is the limitations that the Korean Civil Procedure Act places on document discovery. I don't know what else you would call it. Sharp, of course, disputes that and says that they're not trying to circumvent the rules, but they really offer no explanation for why that is. They just offer their own Ipse dixit. So that I think is the major factor.

The other major factor here that places this application sort of outside of the norm is Sharp's attempt to import/wholesale the entire U.S. discovery record from this litigation. I guess maybe I should say export, trying to export that entire discovery record to Korea.

Sharp's made no articulation of why they need this entire five-million-page-plus record.

HON. LEGGE: Mr. Searby, are you able to hear counsel's comments?

MR. SEARBY: I am, very clearly. Thank you.

HON. LEGGE: Okay. Thank you.

Go ahead, please.

MR. CUNNINGHAM: No articulation for why they need this

five-million-page-plus record. In fact, I think it's probably more than five million-plus pages because quite a few of the documents are native files. So if you were to actually convert them into pages it would be greater than that, but in any event there's been no showing of relevance, just Sharp against Sharp's Ipse dixit statement that all of the documents it seeks are relevant, which is actually contradicted by the statement of their declarant who says that only a limited amount of the documents are relevant and will actually be used in the Korean court.

Sharp cites no precedent at all allowing an applicant under 1782 to gain access to an entire discovery record like this. In fact, the closest facts of the situation in that regard is the Intel case itself that went out to the Supreme Court and gave us the sort of four discretionary factors that set the framework for this motion.

And in Intel, the applicant was AMD. AMD sought all documents, sought a subpoena from Intel to get all documents that Intel produced in another litigation with another company called Intergraph. And that case wound its way all the way up to the U.S. Supreme Court and gave us the four factors. And on remand, the case was remanded to the Northern District and Judge Ware took a look at the subpoena and evaluated it under the four factors that the U.S. Supreme Court gave and said that under the fourth and final factor having to do with undue burden, said

that the subpoena was overly burdensome because it just sought the entire discovery record from that case with no effort to tailor it to AMD's needs.

So I think that those two factors really dictate the results here; the blatant and runaround of Korean discovery procedure and the major overreach by Sharp. Those two factors dictate that the subpoena should be quashed and I think that the rest of the analysis under the Intel factors really flows from there, and I'd sort of like to go ahead and touch upon some of the other points under the Intel factors.

The first factor --

HON. LEGGE: You're telling me that Judge Ware got the Intel case back on remand from the Supreme Court?

MR. CUNNINGHAM: It's true. Yes.

HON. LEGGE: And he walked through that case, Intel case was in front of him and evaluated the four factors?

MR. CUNNINGHAM: That's true.

HON. LEGGE: Go ahead.

MR. CUNNINGHAM: So under the, what I would call the receptivity factor, which asks whether the Korean court would be receptive to judicial assistance to getting these documents, I think this goes to the point that your Honor made somewhat in that it's a kind of a fundamental fairness analysis. And I would submit that no court would be receptive to a procedure whereby one side gets to opt out entirely from the discovery

rules and the discovery limitations that the foreign court or foreign regime places on litigants, in this case Korea, while the other side, the defendants in the Korean litigation, are left to litigate and to try to take discovery as best they can subject to those limitations. That's really contrary to just fundamental principles of fairness and equity between the parties. And we've shown, in fact, that the Korean court is no exception in that regard in their civil procedure act; in the very first article in their civil procedure act they cite that fairness is a fundamental concern of the court.

And I won't go through all the details about the volume of discovery here as I know your Honor is familiar with it, but I'd like to say just a word about depositions in particular because that's part of Sharp's application in seeking the entire discovery record here, they're also seeking all depositions which include multiple -- my last count was 18, but I think it's more than that now, there to be depositions.

Depositions aren't available to litigants under Korean discovery rules and so it would be particularly unfair to the defendants in the Korean litigation to have their opponent have access to this very powerful discovery tool while we have no access at all.

We've also offered other evidence on this receptivity point that I won't belabor, but it's in the briefs. It would also -- allowing these massive discovery records to enter the

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Korean litigation would also thwart the Court's stated goal of efficiency, definitely does not favor the efficiency to introduce five million-plus pages of documents into the litigation and it runs contrary to Korea's statement it made when acceding to the Hague Treaty that they will not execute letters of request issued for the purpose of obtaining pretrial discovery of documents if the letter of request doesn't identify particular documents.

Sharp responds with two points, I think, basically on this issue of receptivity. One, they offer a hearsay statement from the Korean court, which we think shouldn't be regarded, it should be disregarded as hearsay. But even if the court were to consider it, I think it's of very little value because what they say is they -- they say they told the court of their plan to take discovery through the 1782 procedure and the court, quote, acknowledged that effort. So, again, I think the court shouldn't consider that statement, but I think it's a long distance between acknowledging and actually stating that the court would be receptive to those documents.

And then the second point that Sharp makes on this factor is that Korea has lax rules regarding admissibility, and I think that Sharp here sort of equates admissibility with being receptive to the documents and I don't think it's the same thing. In fact, I think at times those two things can be at cross-purposes. I think that if the court has lax rules and

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really no control over documents that are admissible, that may well mean that the court would not want to see five million-plus pages of documents introduced in its litigation, and some of the cases do talk about this in terms of the danger of swamping the court or clogging the court with foreign discovery, and I think that's a real danger here.

So moving on to the next factor under Intel, which I would call the availability factor, or the question is: Does the foreign tribunal have jurisdiction over and can it order others to produce the evidence that the applicant is seeking? Here we challenge the assertion that Sharp can't get any documents at all through the Korean discovery procedures. I think what they can't get is the really broad U.S. style discovery that they're seeking here, but Korea does have procedures, as I said, allowing the document discovery. I don't think there's any question that the Korean court has jurisdiction over the defendants that are before it and can order them to produce documents, and I think both sides have actually cited to the article under the civil procedure act that allows for that.

It's also the case, and I don't think this is disputed, that the Korean court can order the KFTC, the Fair Trade Commission, which is the antitrust enforcement agency in Korea which conducted an investigation into the CRT matter and produced a report about their investigation. There's no

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question that the court can order the KFTC to produce documents.

Now, Sharp says that the KFTC wouldn't comply with any court order or would not produce documents, and I submit that that's really not credible because Sharp in its own complaint in the Korean court said that that was, in fact, their plan to conduct document discovery, that they were going to request that the court order the KFTC to produce documents from its investigation. So I don't know what's changed. I haven't heard anything from the other side about what's changed from that time until now, from the time they filed their complaint and said that that was their plan for discovery to now when they say they actually can't get any documents through the KFTC.

I understand Sharp makes the argument that they don't have enough information in order to make an application to the Court because they need to know certain details about the documents in order to do that. We've explained in our reply brief, offered some suggestions as to how they might go about that. I won't go into that, maybe I will when I get a chance to talk again or if your Honor has any questions about it.

So the court can get -- has jurisdiction over the Korean defendants and can order the KFTC to produce documents. So the question is really: What's left after that? Is there anything left that Sharp needs beyond what's available to it in Korea?

I haven't heard Sharp articulate any need for anything beyond what might be available from those sources. So the

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bottom line here is that the Korean rules provide for discovery and those are the rules that should govern Sharp's Korean lawsuit.

The fourth and final factor under the Intel analysis has to do with whether the application is unduly intrusive or wholly burdensome. In this regard, I think the application speaks for itself. Your Honor made the point that it's really hard to conceive of a broader request than what Sharp has made here, which is basically give me all the documents that you have without attempting to tailor it at all to their particular needs or even articulate what their needs are.

And I'd like to say a final word finally about confidentiality concerns. The defendants have a real concern about maintaining the confidentiality of their documents here and we believe that the protective order can't be adequately modified to evaluate those concerns. And I think the real difference here between sort of the garden-variety requests that normally happens from a litigant in another matter when they make an application or try to gain discovery documents from another matter and to try to modify a protective order in order to suit that need is that when that happens and it's purely within U.S. borders, the Court can have some assurance that they'll be an adequate protective order in that other matter that will maintain the confidentiality of those documents.

Here, that's not the case. We've presented evidence

and, again, it hasn't been rebutted that the Korean court doesn't have that statutory authority, can't issue a protective order of that nature.

So I understand that Sharp has said that they would -- suggested that they could -- the court could somehow modify the protective order in this matter to alleviate our concerns, but they haven't really articulated what that modification would look like or how it would work and, in fact, I can't conceive of a way that it would work that would allow Sharp to actually use the documents in Korean litigation, because to use them in the Korean litigation, they would have to be showing them to all sorts of people who are not parties to that protective order. They would show them to the court or witnesses, you know, possibly experts and consultants and to the other defendants in the Korean litigation. So we just don't think it's workable and we have a real concern about confidentiality. I think I'll leave it there, your Honor.

HON. LEGGE: Okay. All right. Mr. Saveri, do you wish to speak on behalf --

MR. RUSHING: Yes. Thank you. I'll do that.

HON. LEGGE: Would you mind coming down here a little bit closer so Mr. Searby can hear you.

MR. RUSHING: Your Honor.

HON. LEGGE: Would you identify yourself and who you are speaking for.

MR. RUSHING: This is Jeff Rushing on behalf of Saveri and the direct purchasers, I think I should say.

Your Honor, I'll be brief. We said it in our paper, but our view here is that we should not be a party to this proceeding, and basically I think it breaks down to two, kind of, categories of reasons.

First is a matter of common sense and I think, as your Honor noted, fairness. These are not our documents. They belong to defendants. We have them by virtue of our participation in this case, but our interest in them is not as great as defendants. They're for use in a case that we have no interest in, but the defendants, at least some of them, have a great interest in. And we think the burden of production, actually, it would be significantly less for the defendants themselves to produce these documents to the extent they ultimately are produced is less than our burden because primarily by virtue of their much greater resources.

And it would appear, I think as Mr. Cunningham explained, that we are a party to this proceeding only because of some tactical decisions made by Sharp based on their review of it's better for them to subpoena us than it is to subpoena the defendants under the jurisprudence of Section 1782. So as a practical matter, we don't feel we should be here. And as a matter of law, also, I think we shouldn't be here. Again, as Mr. Cunningham explained under 1782, it seems clear this is an

attempt to circumvent the requirements of Section 1782, but I'm not going to repeat those arguments. But under American jurisprudence as well, it's not proper as the Haworth case holds and as we explained in our brief. It's not generally proper to seek documents from a third party that you can obtain from a party opponent.

And in the Haworth Case, Haworth the Federal Circuit upheld a denial of a motion to compel by the lower court which held just that. And that case involved a single document and the court said, No, you have to try to get them from your party opponent before you seek them from a third party. So we would add that as an additional reason to deny the motion to compel.

Finally, we are very concerned about becoming some sort of fulfillment center for other foreign litigation to become the go-to place to get all the documents in the CRT case for use in your foreign litigation. We don't want that business. We want to spend our time litigating our cases, particularly this one, and we don't -- we have a lot to do and we have a lot of that kind of work to do and we don't -- it's not a convenient thing for us at all even to the extent that our time is compensated or some of our time for us to be doing. We don't want that business and we are very concerned about that.

And, finally, just briefly on the burden itself, we have a declaration that we've estimated as best we can at this point that it will take approximately 30 to 40 hours of time to do

this. There's nothing contrary in the record, so I think we can leave it at that. But I will say that it's a much more complicated process than Sharp would have the court believe. There are many, many files that have been produced in the case in many different formats. It doesn't -- the downloading process does not work every single time. There's many times it doesn't work properly and you have to sort of sort it out and back it up and figure out what went wrong and do it again. That takes time. And then there's also a substantial amount of time to be spent verifying that you've done what you've supposed to have done, that your production is complete, that you have included things you shouldn't include and that you have included everything you should. With that your Honor, I will --

HON. LEGGE: All right. Mr. Searby, you wish to speak in support of your motion -- in opposition of the motion to quash and in support of your motion to compel?

MS. NEVINS: I just got a call saying they all got disconnected to you.

HON. LEGGE: What happened?

MS. NEVINS: They said it was about four minutes ago.

(Pause)

HON. LEGGE: Mr. Searby, I understand you have been disconnected here. Apparently a line here connecting the Starphone to the phone system got accidentally disconnected. How long have you been offline?

MR. SEARBY: I'll tell you, Mr. Rush [sic] from the Saveri firm had only just begun speaking, so I don't think he had gone far at all. I don't think he had gotten at all into his argument apart from, I think, concurring with --

HON. LEGGE: Well, yes, he did, he finished it, because we did not know here that you had been disconnected. So Mr. Rushing went ahead and concluded his remarks without realizing you weren't on the line.

MR. SEARBY: Well, can we -- we stayed on the line here with the other remote parties, so we're not sure what happened.

HON. LEGGE: The accident was here. So in no way were you or your colleagues at fault there. So what I'm going to ask Mr. Rushing to do is please go through his remarks again so that you have the benefit of what he's been arguing here while you were offline.

Mr. Rushing.

MR. RUSHING: Hopefully it will be better this time having had a practice run-through.

Your Honor, as I said, we don't believe that we should be a party to this proceeding as a matter of common sense and fairness, as your Honor pointed out, and also as a matter of law.

First as to common sense and fairness. The documents that are at issue here are the defendants' documents. We have them by virtue of our participation of the case, but they belong

to the defendants and the defendants' interest in their disposal is significantly greater than ours. The documents are for use in a separate case that we're not parties to and the documents -- I think the burden to produce the documents is significantly less for the defendants themselves rather than for us.

And it appears to us and I think clearly that the reason we're here is as a result of a tactical kind of decision made by Sharp to avoid and/or improve its arguments under Section 1782 and that's the only reason we're here.

As a matter of law, I think that's not proper under Section 1782. As Mr. Cunningham has argued, and I'm not going to -- I'll adopt his arguments, essentially. I won't repeat any of them. It's also under the Haworth Case, which we cited and explained in our brief. It's not proper generally in -- under the federal rules to seek discovery of documents in the possession of your party opponent from third parties before you've sought to do that from your party opponent, and that's what's happening here. Again, there's no difference in the documents we have and the documents defendants have and there's -- we shouldn't -- there's no reason for them to proceed against us first in that respect.

Third, we are very concerned about becoming the go-to source for all foreign proceedings related to this conspiracy, your Honor. As your Honor knows, we contend it's a global

conspiracy and there are proceedings around the world regarding it and I think it's not unreasonable at all to expect that we're, your Honor, to say that we were the worldwide fulfillment center for these documents that we would, in fact, get many more requests. And we don't, as I said, your Honor, we don't want that business. Our business is litigating the cases we have, including this one. Our time is -- we don't have unlimited resources, far from it and we do not want to spend our time doing that.

And, finally, I said briefly about the burden, we put in our -- we have a declaration about our preliminary estimates; that it would take 30 to 40 hours of time to do what Sharp is asking us to do and there's no contrary evidence in the record that Sharp had an opportunity to put in a reply brief, they did not. So I will add only that it is a great -- there are a great many files. It is not a situation where we can simply push a button and everything downloads perfectly, automatically. A great many files. They don't -- that have to be downloaded. They don't always download properly. So there's a significant amount of time involved in figuring out why something went wrong when it inevitably will go wrong, not every time, but in this kind of project there will be a number of times it will happen. There's also a significant amount of time that's got to be spent verifying that everything's been done properly, making sure nothing that shouldn't be included is included and making sure

that everything that should be included is also included. So that's the situation we're in.

Finally, I would add something I didn't say early, which is simply, Sharp, they're not a party here. They've elected to exclude themselves from the class. And so, again, for that reason we would say that they just -- they shouldn't be allowed to, as your Honor points out, reap the fruits of others' sweat equity in this case.

HON. LEGGE: Okay. Thank you.

All right. Mr. Searby, do you wish to speak on behalf of your motion to quash and in opposition to the -- I'm sorry, the opposition to the motion to quash and in support of your motion to compel?

MR. SEARBY: Yes, your Honor.

First of all, I want to say I appreciate your candor at the outset of the call and I believe that we can address your concern in that our request does fall within the jurisprudence that you'll be looking at as you decide this, and I think we have pretty solid answers to all the questions that have been raised by the Saveri firm and the defendants.

I want to cover the three most important arguments in these motions and I think that I'll also try to address the confidentiality provisions, although I think that's sort of a secondary argument for reasons I'll explain. It's downstream of whether providing these documents to Sharp is a good idea in the

first place.

The first big point is that Sharp has a strong need for using the 1782 procedure to seek relevant evidence. The second point I'm going to get into is there's no genuine indication that the 1782 procedure is likely to offend the Korean court and to the contrary the court will be receptive to considering evidence gathered in this manner. And, third, the intended discovery would not impose any undue burden.

But before getting into these points and any others that interest your Honor and some of your Honor's concerns at the outset, I want to say that when you consider the positions that defendants and Saveri take, taken altogether they simply defy common sense.

Now, on the one hand they say that Sharp can't use 1782 because it hasn't tried using Korean discovery procedures, but on the other hand they say Korean discovery procedures are so limited that the Korean court would be hostile to 1782 relief. This Catch-22 that defendants have set out can't be and isn't how 1782 works. We would not be here, your Honor, wasting everyone's time if Korean counsel thought that Sharp could get documents to prove its case through the Korean court. And there wouldn't be a 1782 procedure in the books unless litigants were sometimes unable to get discovery from the foreign court.

Another example of trying to have it both ways, defendants say at one point that Sharp should only be asking for

CPT documents, color picture tube documents, but at another point they tell Sharp to go after documents in a Korean Fair Trade Commission Report that so far as we can tell only has to do with CDT, color display tubes.

Defendants fault us for not getting a court transcript from the Korean court. There is no transcript to get.

Defendants tell us to ask the Saveri firm to identify the documents we need for our case to go to the Korean court, but we did ask Saveri, and in Saveri's view as class counsel they were not free to do this.

Naturally everyone is going to say that we ought to be going to someone else for these documents, but here we are three months into this process and Sharp satisfies all the statutory requirements and all the discretionary factors weigh in favor of enforcing the subpoena.

Now, I want to now get into more detail on the first point; Sharp's need for 1782 relief. Your Honor, defendants' reply is flat wrong in its lead point, arguing that Sharp could have applied for discovery in Korea. They referred to a 169-page report by the Korean Fair Trade Commission, KFTC, citing 280 documents. And they say, You should have asked for those 280 documents in that report. But as their own defendant -- I'm sorry, as their own declarant, Mr. Troy, makes clear at paragraph 3 of his declaration that they submitted with the reply, this KFTC report related to price fixing of CPTs for

computers, not the CPTs for TV sets. You can read the declaration and that's what that report is about.

Sharp can proffer now based on our review in the last couple days of this report by Sharp's Korean counsel that this report refers to no price fixing of CPTs. Sharp's Korean action only involves CPTs, price fixing of CPTs that Sharp purchased and the KFTC is undisputed, shut down its investigation of CPT price fixing with a one-sentence letter. There is no report from the KFTC identifying documents as being related to CPT price fixing. Therefore, we could not go after those documents using Korean court procedures. As both parties agree, are limited and require you to specify exactly what documents you need.

Defendants' reply brief does not even meet Sharp's argument that it is seeking with the 1782 subpoena documents produced by various parties that are not even before the Korean court and it cannot be said could be brought within the jurisdiction of the Korean court. There's been no showing of that. The Korean complaint alleges that Sharp was a victim of CRT price fixing at these glass meetings; same as plaintiffs here in the U.S. have alleged. The Korean complaint that Sharp filed identified as coconspirators not only the name of defendants in Korea, but also other companies; Chunghwa, Hitachi, Panasonic, Toshiba, who have been subject as defendants in the United States to years of discovery in the U.S.

Now, again, even as to the subset of conspirators in the Korean complaint that are named defendants before the Korean court, Sharp is not presently in a position to use the limited Korean discovery procedures to make document requests. And this is not news. Sharp first explained this three months ago in its ex parte application for 1782 relief. So this is not news and it's nothing Sharp has ever needed to run from.

Instead, what you have here is a common-sense situation where 1782 relief is appropriate because the United States has more expansive discovery procedures than are available in a foreign proceeding and it is the policy behind 1782, in fact, as explained by court decisions including Intel that we're going to permit this broader discovery even if broader discovery is not available in the foreign court because we want to encourage foreign courts to cooperate and to expand their discovery procedures.

Now, what this all boils down to is that instead of the burden in hand, by which I mean the U.S. discovery, the defendants and Saveri want Sharp to chase after a whole bunch of birds in the bush and the efficiency and fairness and practicality of this is not there. We have a need to issue the subpoena for the collection of discovery that is all gathered together rather than pursuing probably futile efforts with many, many different companies that many of which are not before the Korean court.

This is -- and by the way, it is, in fact, precedented in 1782 cases for parties to come in with the 1782 application and ask for collections of discovery that had already been produced in the course of U.S. litigation. The application that we put forward to the court laid out a number of these cases, in particular on page 8 of the ex parte application Schmitz case, the In Re Linerboard Antitrust Litigation case, there's also on page 11 of the ex parte application we cite to -- I'm sorry, page 10 of the ex parte application we cite U.S. Philips Corp. as well as In Re Linerboard Antitrust Litigation. So it is, in fact, not uncommon for collections of discovery that had been worked up, as the Court says, with someone's sweat equity over the course of a litigation to be granted access to other parties who need those, who demonstrated the need and the relevance of those collections of evidence to go through for purposes of foreign litigation.

So I understand the Court on the sweat equity point; however, it is just not -- had this not been a concern that the jurisprudence has recognized. And, in fact, parties come in all the time and join litigation and they opt out of cases, class cases, and they come in and they obtain access to the discovery record that's been worked up thus far in the case. This is nothing unusual.

Now, the next major point here, the second major point is that the Korean court is not offended by the use of 1782, but

is rather receptive to any evidence that would be gathered in a foreign proceeding. This is a key point under the Intel case and the Intel factors. It's very important that the use of 1782 not offend a foreign court, but this is not a case where the foreign body has expressed offense at Sharp's 1782 application in a way that would weigh against the exercise at the Court's discretion, and there are such cases.

A party that does not have means in the foreign court to pursue discovery there does not by using 1782 circumvent, quote, unquote, the foreign court's restrictions of evidence gathering. And the case that you need to read, your Honor, to bring that point home, although there are several, is the Heraeus Kulzer case where Judge Posner is writing for the Seventh Circuit. This case is cited at page 7 of Sharp's opposition. So it is not nearly by --

HON. LEGGE: Hang on a minute, please. Let me pull that citation up. Page 7 of your opposition letter?

MR. SEARBY: Yes, your Honor.

HON. LEGGE: The one cited in your second paragraph?

MR. SEARBY: Yes, your Honor.

The Seventh Circuit tells that Germany's limited discovery procedure did not mean than the German court would not be receptive to that same discovery if obtained in the United States and, therefore, the 1782 process was appropriate.

This situation, that happens all the time precisely

because 1782 contemplated situations where foreign discovery processes were more limited than they are in the United States. So it simply does not -- it's not taking out the circumvention of foreign discovery procedures that we seek evidence here that we could not get there, and this is a key point. The proper question, your Honor, is not whether the foreign court itself would order the discovery, but whether the foreign court will consider the evidence that the party gathers in the United States. That is the test. That is whether a court is receptive to the evidence or to the contrary would be offended by being presented with this evidence, and there is no evidence of that, no suggestion of that here.

On the real issue of whether the foreign court will consider any evidence that is produced under a 1782 application here, Sharp's position has support from two sources. First, Korean law is receptive with the consideration of evidence that was gathered abroad. And, second, a Korean court in this case had a reaction that was not hostile and was even positive when apprised of the 1782 application by Sharp. Defendants' reply fails to offer any evidence contradictory to Sharp showing on either of these two points. And I want to take those points one by one.

First, Sharp's declarant, a Korean counsel named Mr. Oh, reports as a percipient witness on the court colloquy on June 28th, 2012, and he draws reasonable factual inferences from the

statements that he reports, and that's in paragraph 13 of Mr. Oh's declaration. I can read it to you your Honor if you'd like.

HON. LEGGE: Wait a minute. I think I have it in front of me here. It begins at the bottom of page five and continues over to the top of page six.

MR. SEARBY: So, your Honor, defendants' only response to Mr. Oh's declaration is that it's inadmissible hearsay, but it's not. Sharp told the court, the Korean court, about the 1782 application; that's not hearsay, that's notice. The court then asked how long it will take to do the procedure; that's not hearsay, that's a question. The court postponed further proceeding in the Korean case until Sharp submits evidence; that's not hearsay, it's a procedural act by the court.

In any event, your Honor, the hearsay rule is just not applicable to a discovery motion like this, like what we're doing right now. There's a case for that, Cooper Hospital 183 F.R.D. 119 at 129. This is not the type of motion where you need to even consider the hearsay rule. The defendants note a bunch of cases.

HON. LEGGE: Wait a minute. My concern was what Mr. Oh has said here. What you argued for Mr. Oh is not that it's hearsay, it's the fact that all I get from paragraph 13 is that the Korean Judge was told that you go through some discovery procedure in the U.S. and that you're doing it. And he told the

Court it would take some time and the Court agreed to not fix a date.

Now, to me, that doesn't shed any, any inference that once the Court sees the volume of the evidence and what it is, that it's going to accept it. And there's nothing here to indicate that the Court was told that this is five million pages of document discovery and 18 or 20 depositions, whatever it is. You're just silent on the subject. Now, maybe Mr. Oh drew conclusions, but that's not a clear statement of what the Court said that it would or would not consider it. It's just give me more time to do what you want to do and then we'll see what it is.

MR. SEARBY: Well, your Honor, I think it's time for me to jump at this point about allegedly dumping five million documents of discovery on the Korean court. That is a myth that the defendants and Mr. Saveri have cumulated here. There's no intention of introducing into the Korean court five million pages. That would simply be the documents that Sharp could access and review. If the Korean court only needs to see the documents that Sharp in the end determines it needs to put on its case in Korea, not five million documents. We have, in fact, no idea of the volume of documents that are in the end going to be worth submitting, are going to be of sufficient evidentiary value to submit to the Korean court. So it is really a myth and a scare tactic for the defendants and Saveri

to raise this prospect of a document dump of five million pages on the Korean court. There's no reason to think that the Korean court is going to ever have to deal with a volume of paperwork like that. So it is not a burden on the Korean court. It is documents that Sharp wants access to for selection of useful evidence and we don't know exactly what that's going to be.

HON. LEGGE: Let me ask you another question. What are the defendants in your Korean case going to get and have access to from this material?

MR. SEARBY: Your Honor, we have every intention of sharing whatever records we receive from this application with the defendants in the Korean case. We imagine that they would ask for them and imagine that we'd have no reason not to give them any of the materials. In fact, in the order that your Honor signed, it expressly contemplated that the parties to the Korean litigation would have access to the materials because the parties would need to adhere to the U.S. protective order and otherwise take measures to protect the confidentiality of those documents. We entirely expect that the defendants could have these documents as well and there's no unfair advantage or unfair tactic involved here.

The other thing I want to say --

HON. LEGGE: Wait a minute. Let me follow through with a couple of things. You do have defendants in your Korean case who are not defendants in the United States case; is that

correct?

MR. SEARBY: Your Honor, perhaps some subsidiaries of -- some subsidiary companies of the parent companies that are defendants in the U.S. case.

HON. LEGGE: So you don't think you've got in Korea any defendants that are either themselves or through parents or parties in the United States litigation?

MR. SEARBY: Your Honor, I have a list of the Korean defendants and they're Samsung entities, they are LG Philips, LP Displays, there are a couple of names that are not entirely familiar, Meridian Solar Display Company, but by enlarge these are entities whose families, corporate families are involved in the U.S. litigation.

HON. LEGGE: Okay. Thank you. Go ahead, please.

MR. SEARBY: The other thing I wanted to note is that Sharp raises the point about the Korean court's reaction to the 1782 application. Not only to make the point that there was apparently a positive reaction to news of the 1782 application, but also that there was no hostility, that there was no offense taken, and it seemed to be received, at a minimum, neutrally, we would argue positively.

Now, what defendants and Mr. Saveri really need to show in order to persuade this court that this is a bad idea, is that this is going to rub the Korean court the wrong way and that they're going to take offense.

Now, they have fallen flat in terms of that showing and they do not dispute that the Korean Code of Civil Procedure permits the Korean court to consider any evidence; that's Article 202. They also do not dispute that Article 296(2) of the Korean Civil Procedure Act, which is cited by Mr. Oh in his declaration at paragraph 17, that this article permits consideration of evidence gathered abroad.

So what we have here is a situation where Korean law says very clearly the Korean court can look at this. The Korean court can take this evidence that you bring in from overseas and consider it and take it for whatever it thinks it's worth. So you have legal principles that indicate a receptivity to the evidence that has been gathered abroad.

Again, your Honor, the question is not whether the foreign court itself would order the discovery, but whether the foreign court will consider the evidence that the party, Sharp in this case, gathers in the U.S.

HON. LEGGE: Is it not some evidence of resistance when you look at Korean law which does limit discovery so severely and will not engage in -- what do I want to say -- international intercourse over such things as services, subpoenas and service of process and the Hague Act procedures for doing various things? Is that not an indication that they are running their courts the way they want to run their court and they don't want as many interferences from foreign courts?

MR. SEARBY: No. Again, your Honor, that's not an indication. And this goes back to the Heraeus case, the Heraeus Kulzer case that I spoke about earlier. Judge Posner basically said, You cannot draw that conclusion. You cannot draw that conclusion based upon the more limited discovery procedure of a foreign court. That they would be hostile to being handed evidence gathered abroad in a more liberal fashion, a more broad type of discovery. That is precisely -- your concern is precisely the one that Judge Posner and other courts address and put to bed. This is not an indication of hostility.

Your Honor, when a federal court of a foreign tribunal is considered hostile in the 1782 jurisprudence that we've read, it lets the U.S. court know it. In fact, in the Intel case on the remand that counsel cited earlier in this hearing, which I frankly -- they did not brief this and so I'm reading this for the very first time on this call, but on the remand in that case, the European Commission actually wrote amicus briefs to support the finding that the European Commission does not need or want this Court's assistance in obtaining the documents. And based upon that amicus brief, the court in remand on the Intel case said that the EC is not receptive to judicial assistance in this case and that's really what this Intel case on remand turned on. And so --

HON. LEGGE: Do I have a record of that, that is, what happened to the Intel case on remand in the papers before me?

MR. SEARBY: I do not think so, your Honor. I'm not familiar.

HON. LEGGE: I didn't remember seeing it, so I thought maybe I missed something.

MR. SEARBY: I'm going to make another point or two about the case then that defendants did not brief, despite the moving papers and the reply papers.

It says this is 2004 Westlaw, 2282320, and this case turns on the -- basically the fact that the EC did not want this judicial assistance and it made that very clear. That's hostility. That's a lack of receptivity, not some language in the Hague Accession Treaty that only addresses what a Korean court will do with an inbound request for discovery through a Korean court in Korea. That's just a very attenuated line of logic that defendants are citing as proof that the Korean court would be hostile to documents that came from the U.S. through a 1782 procedure.

I also, while I'm on the subject of Intel, your Honor, I want to point out that, yes, as counsel stated and I'm learning for the first time here, the court on remand did say that the document requests were unduly burdensome. What counsel didn't tell you is that the court found it, quote, largely unnecessary and purely academic to address this doctrine and only did so, quote, for the sake of completeness, and then it addressed the fact that there was no attempt to tailor its request and there

was 67 or 70 requests and so this is a different case, your Honor.

HON. LEGGE: Could I have the cite please to Judge Ware's decision on a remand. Could you give me the cite?

MR. SEARBY: It's 2004 WL 2282320.

HON. LEGGE: Okay. Thank you.

MR. SEARBY: So it is not exactly -- this case does not truly turn on the point that Counsel Cho decided for. It turned on the fact that the European Commission flatly and plainly rejected the need for this evidence, and then just as a throwaway point for the sake of completeness, the court knocked the burdensomeness of the request.

Your Honor, I'd like to turn to the undue burden and overbreadth arguments now. This is a key point. This is largely Mr. Saveri's issue. I would say, truly Mr. Saveri's issue.

According to Mr. Saveri's declarations, the discovery files at issue that we're all arguing about has been transferred to a single server, which means that in practice, and this is my interpretation, your Honor, the transfer will involve a little more than someone monitoring an automated transfer process for these computer files to be put on a hard drive and given to us. This is not a burden, a serious burden upon Mr. Saveri to begin with. Mr. Saveri claims his IT team would spend 30 to 40 hours doing this, but in saying that, your Honor, Mr. Saveri has not

taken account of the fact that Sharp is committed to pay the costs of a vendor to come in and transfer the hard drive data instead of having his personnel sit there while the files copy. Sharp will pay for that vendor to come in and do that. Mr. Saveri's 30- to 40-hour estimate does not account for what burden he would still have after we make that accommodation. So, really, the burden here is extraordinarily light. And I would further add that by asking for the discovery file, and we've now limited our request to defendants' documents, not everybody's documents but defendants in the U.S., their documents and defendants' depositions. By limiting it to the discovery coming in from defendants, it's all preloaded on a hard drive, we thought we were reducing the burden on the part of Mr. Saveri, and we are. We're not asking for complicated categories of documents in which people actually have to apply lots of judgment and analysis to whether they're responsive and therefore we're making this incredibly easy and the burden very, very light. It is ironic that they're pointing to the way that we're going about this as the cause of burden merely by the number of documents involved, five million, when, in fact, this all can be done within a few hours by an outside vendor for virtually no cost to Mr. Saveri.

HON. LEGGE: A couple of comments. One is that you could have taken the burden from them entirely by directing your subpoena to the defendants individually instead of to

Mr. Saveri's office. And, secondly, I'm not sure if I order the subpoena enforced that I'm going to go along with the idea of an outside vendor. It seems to me there's some risks over control of their documents and their database that is presented by their turning that access over to an outside vendor, but that's a very minor point.

Go ahead, please.

MR. SEARBY: Yes, your Honor.

By the way, we would make every -- we would allow Mr. Saveri to use his judgment and pick the vendor and be in control of the whole process; we would just pay for it. But to your Honor's point about directing this instead to a defendant in the case instead of Mr. Saveri, the fact is that before we got to all these discretionary factors under Intel, we had to make out the statutory requirements first. And one of those statutory requirements was that the subpoena recipient is in possession of the documents that we seek and that they control evidence within the Northern District of California. Well, Mr. Saveri is the one who made that showing possible as to himself. We have his declaration, which we cited in our application. And, you know, we don't frankly know who we can go to and prove to the court has the entire discovery record in the case that we seek from all defendants. We don't have something we can submit to your Honor to fill out that statutory requirement. Mr. Saveri fulfills that requirement and, again,

your Honor, the burden here is a matter of hours versus IT staff paid for by Sharp. It really shouldn't matter whether we collect the documents from Mr. Saveri or were able to identify some other parties, some other -- some defendant in the case to collect the documents from. In either of those cases, the burden is not significant and is something that Sharp is willing to assume the cost of.

Now, Saveri's alternative for us is to go start all over after three months and everything being drawn out in this process and to start over and then I suppose to pursue new application on each coconspirator in the Korean case for their documents instead of simply and efficiently getting them all from one source in a matter of hours at Sharp's expense. Sharp's subpoena targets materials that have been already passed through a certain filter of relevance to the conspiracy that took place through these so-called glass meetings all over Asia as alleged in both the Korean complaint and the U.S. case. So contrary to what counsel said, that we have very good reason to believe that this collection of discovery contains evidence that may be useful in our case, and, you know, who's to say how many documents we'll wind up needing to use and submit to the Korean court. But the fact that this is a collection of documents that we would obtain from the same defendants involved in the same glass meetings that victimized Sharp is an excellent way of understanding the relevance and the discoverability, the

relevance for discoverability purposes of these collection of documents.

Defendants and Mr. Saveri also argue that Sharp should narrowly tailor its document request, but if we did that, I guarantee you we'd be being accused right now of a huge burden of having to analyze all kinds of very specific tailored document requests. And it should be enough to Sharp to determine which of the documents from the U.S. case about these so-called glass meetings are helpful to its claims about price fixing and CPTs. The burden argument in the end is just an illusion, your Honor, with a big number of filing many of these documents but no actual genuine burden either to Mr. Saveri or to the defendants.

I want to talk about the fact that we have tailored our requests somewhat as a result of the meet-and-confer process with Mr. Saveri. The subpoena calls for all documents in the U.S. litigation as we stated in our motion to compel Mr. Saveri. We trimmed that down after speaking with him and we agreed to one of his suggestions that we only seek documents from the defendant and not from the plaintiffs or the victims in the U.S., and so we have, in fact, tailored our requests as much as we could. Mr. Saveri didn't sit down with us and explain to us how to craft just the right document request that would allow him to produce only the documents that are relevant to our claims about CPTs and he didn't give us any other suggestions

for tailoring that would allow us to know that we were not missing out on relevant evidence that has been produced again through this filter of a case about the same conspiracy in the glass meetings. So we have attempted to narrow our requests. We have narrowed our requests. There's no serious suggestion out there for us to grab hold of for narrowing it even further and what I suggest --

HON. LEGGE: Wait a minute. Where is all this narrowing? All I have in front of me is a definition of the documents requested in the subpoena and it says: Any and all discovery material obtained during or as a result of discovery in the direct purchaser action relating to cathode ray tubes including, but not limited to, color picture tubes. I don't see how that's limited. You must have some either verbal agreement or written agreement with Mr. Saveri that I haven't seen.

MR. SEARBY: Well, your Honor, what you're looking at is the exact subpoena that we served after getting the order from the court.

HON. LEGGE: Yeah. That's right.

MR. SEARBY: After Mr. Saveri took two weeks to object to that subpoena on the grounds of overbreadth and burden, we arranged a meet-and-confer and we met and conferred to try to narrow our requests just as your Honor would like us to and the results of that meet-and-confer was the agreement by Sharp communicated to Mr. Saveri to reduce its requests as I've

described now.

Actually, in our motion to compel on page 3 of our motion to compel addressed how we have, since serving the subpoena, tried to make clear to Mr. Saveri that we accommodate his suggestion about limiting our requests to the defendants' documents and for the defendants' deposition. That is at the bottom of page three of our motion to compel, which is document 1340 on the record.

HON. LEGGE: Wait a minute. Where is that now?

MR. SEARBY: Page 3, your Honor, in our motion to compel letter.

HON. LEGGE: Bottom of page 3 at the August 28th meet-and-confer. Is that it?

MR. SEARBY: Yes. And so we -- and we subsequently made the same accommodation as to deposition transcripts. We also said that we would pay any fees that are owing to the court reporters or reimburse Mr. Saveri for any cost. So this meet-and-confer is something that we took seriously and we latched onto the reasonable suggestions that Mr. Saveri made during that meet-and-confer to reduce the scope of our request. That contradicts, frankly, the arguments that you've heard today and that are in the papers that we have made no effort whatsoever to tailor our requests. We just don't have any basis beyond what we've done to limit our request because Mr. Saveri -- we don't know what's in this discovery record, your Honor, so

we're dependent on Mr. Saveri to explain to us reasonable measures to reduce the scope of our request. In fact, we have taken him up on some of those. And frankly, you know, we think that asking for the defendants' document production and leaving aside everything else, you know, is an excellent way of reducing, you know, some of the issues which have been raised. But the fact of the matter is that if we were to tailor requests with specific document categories in the way that discovery gets done as an initial matter, that would require serious attorney time. That would require serious paralegal time and boxes and boxes being poured through by people. What we are doing is actually minimizing the burden by asking for the document collection in the way that we have.

Again, this happens all the time when parties, new parties or opt-out plaintiffs enter a case and nobody is out there complaining that those attorneys and that plaintiff who just entered the case on behalf of the class is unfairly benefitting from the discovery that had been worked up by other attorneys in the case up until that point.

There are also many instances, as we've pointed out, of 1782 applications being granted where a party involved in foreign litigation is granted access to the fruits of a U.S. discovery process. And so, you know, there might be some visceral reaction there about sweat equity, but the jurisprudence simply permits this kind of thing and I think it's

more concerned with the just result of the foreign litigation and the parties. In our case, Sharp has been victimized by an antitrust conspiracy against it to the tune of untold millions of dollars. That's what this is ultimately all about. And if Mr. Saveri has to spend a few hours coordinating with some document service to transfer hard drives or if we gain access to evidence, that is all in the normal course under this 1782 jurisprudence.

HON. LEGGE: Why didn't you sue in the United States?

MR. SEARBY: Your Honor, I am not -- I'm not Bar'd in Korea. I'm only Bar'd in the State of California.

HON. LEGGE: Yeah.

MR. SEARBY: But what I think I know is that the commerce, the sales that are at issue in the Korean litigation are not touching the United States. That there are these glass meetings --

HON. LEGGE: I understand.

MR. SEARBY: Okay.

HON. LEGGE: I understand what you're saying. So U.S. nexus to most of your sales.

MR. SEARBY: That's right. And, of course, we'd have big problems if we sue the United States without that.

HON. LEGGE: Sure. You wouldn't have problems, you just wouldn't get anything.

MR. SEARBY: Your Honor, these are the same glass

meetings. So there's, at least as far as we know, that these are meetings that are fixing the prices globally so that the sales attached to the U.S. results in a U.S. cause of action, et cetera, but it's the same meetings and that's why we need these documents.

HON. LEGGE: Okay. Anything further?

MR. SEARBY: Well, your Honor, again, there's this discussion of fairness and how the Korean court would react to the defendants in the Korean case not having access to the same tools that Sharp is using as a result of the 1782 application. Again, that's not a genuine argument because there is no proposal by Sharp to keep this material to itself. And if defendants, frankly, want to pursue their own 1782 application here to go after documents that aren't covered by our request, we have nothing to say about that. So it is again a mythical argument designed to make it seem like this is unfair and that the Korean court would somehow react to the unfairness of our getting our hands on this discovery collection.

Again, I think a big thing that your Honor has to realize is that the lead argument here that we could have gone after all this discovery in Korea by asking for the documents in that KFTC report is completely wrong because it had to do with price fixing of products that we didn't buy.

HON. LEGGE: You told me that. I understand. It's a matter of common sense anyway. I'm sure you wouldn't go through

this process if you could get it from your Korean defendants.

All right. Is there anything else you want to add, Mr. Searby?

MR. SEARBY: Well, your Honor, I could go into the confidentiality and the protective order. I really feel like that's a secondary issue. There's case law saying that a party does not suffer prejudice merely by allowing access to materials already produced to other parties and litigation. There are numerous cases where protective orders have not been found to be serious obstacles to a 1782 application. Here we have a detailed plan for protecting the confidentiality of the documents contrary to what counsel said earlier. I'd be happy to go into that. I do think it's downstream from the wisdom of getting us the documents in the first place.

HON. LEGGE: Well, I'm inclined to think that last comment is correct, that I don't think there's any reason for my discussing that greatly at this point.

So if that is all, Mr. Searby, I think you've done an excellent job of conveying your client's position and so I'll turn back to the defendants to add whatever they want to add to the quashing motion.

MR. CUNNINGHAM: Thank you, your Honor.

I'll try to respond to those points in kind here, but let me just say sort of as an overarching matter, what's important here is Sharp -- I'll respond to the first point. The

first point basically being that Sharp has a strong need for documents.

Sharp has tools in order to get documents that are available to them. There's no dispute about that. But you can get documents from the parties, from third parties via discovery tools that are in Korean Rules of Civil Procedure, and those are the rules that should apply to Sharp's Korean lawsuit. That's the basic crux of the biscuit here, I think, is that Sharp should not be allowed to opt out those restrictions and substitute in U.S. relatively lax U.S. discoverability rules and leave defendants to play by completely different rules, more restrictive rules. It's just inherently prejudicial and unfair to the defendants in the Korean litigation.

I think another important point along those lines is that Sharp has made no effort, I heard nothing from Mr. Searby here to contradict this, has made no effort to proceed under those rules to even try to gain discovery, to say it's impossible, but I haven't seen -- they haven't made an effort at an application.

Mr. Searby makes the point that they have a strong need for documents, but defendants also have a need for documents, and I don't think it's any answer to say that, Well, Sharp will make available to defendants in the Korean litigation the same documents that defendants produced here. Those aren't the documents we need. Frankly, what we need is to be able to take

our own discovery from Sharp if you want to place us on equal footing and we would not have an opportunity to do that or anywhere near the same opportunity to do that if we were left to play by the Korean rules, while Sharp plays by U.S. rules.

I heard Mr. Searby say that we're free to apply for our own 1782 application, I don't think that's an answer either. Sharp is a Japanese company, Sharp Corporation, and they've produced very few documents in this litigation that would be available for us to try to get through a 1782 application. And, frankly, that's kind of the tail wagging the dog if you say that it's up to us to mimic their 1782 application to come to the U.S. to get Japanese documents and bring them to Korea. And it's not needed to ensure fairness here. To ensure fairness, all you have to do is quash the subpoena and both parties will try this Korean lawsuit according to Korean rules.

Mr. Searby made the point, maybe I didn't fully understand it, but I heard him say that it's somehow duplicative for us to make the point on the one hand that Korean discovery is limited but on the other hand the Korean court would be hostile to 1782 relief. I think those things actually support each other. I think they go hand in hand. The fact that Korea has these limited discovery rules, that's probative of the fact that they would not appreciate an influx of a document dump from a U.S. discovery campaign. So I don't think those are contradictory at all.

With respect to the KFTC report that we attached to our declaration, I hear Mr. Searby criticizing us because we didn't provide -- provided an insufficient roadmap for him to take discovery in Korea. I don't think it's our job, frankly, to provide him with a sufficient roadmap to take Korean discovery. I think our point in providing that and making the suggestions that we did in our reply brief is that there is a lot of public information that's out there about the documents. There are a lot of documents that have actually been made public in this lawsuit and elsewhere and Sharp can avail themselves of those public materials if they feel, if they say they don't have information about particular documents to make an application. And I think that that's the proper first step for Sharp to make here is to make some effort to proceed and take discovery under Korean rules.

With respect to the comments from the Korean court about acknowledging their U.S. efforts, I think your Honor was trenchant in your insight about that it doesn't really speak to whether the Court would be receptive or not. And if your Honor is inclined to give any credence at all, I would ask you to take a look at the decision in the Digitechnic case that we cited in our briefs.

In that case, the applicant made a very similar statement or re-laid a very similar statement that they said that they had told the French court in that case that they were

going to conduct U.S. discovery and the French court expressed great interest in that discovery and the Court gave that no credence at all for the same reasons that your Honor expressed.

To counsel's point about there being -- with respect to the difference sets of defendants here, it is the case that they are not completely overlapping. There are defendants in the Korean litigation that are not present in the U.S. litigation. So just to try to clarify that point.

On the point about whether the Korean court would be receptive to this discovery or not, I think I heard Mr. Searby trying to reverse the burden there. We cited several cases in our papers from within the Ninth Circuit from District Courts saying that on that point in particular, if there's silence that actually either works against the applicant or the Courts find it's basically a neutral factor. So I will admit that there are cases that go either way on that point with regards to the burden, who bears the burden of showing that the court, the foreign court would be receptive, but I think the Wade authority inside the Ninth Circuit is that that lies with the applicant.

Let me talk for a minute about this Kulzer case that counsel has talked about a couple of times in the Seventh Circuit. It's an interesting case because the way the opinion was laid out, at the start of the opinion Judge Posner talks about 1782 discovery generally and lays out several pitfalls that could -- lied in the path of the District Court as they're

considering a 1782 application. And he goes on to explain why those pitfalls aren't present in that particular case, but I think they are present in this case.

So basically that case had to do with German litigation between two competitors and it was trade secrets litigation and it was two companies that made bone cement and one company sought discovery of the other in the U.S. and with a very narrow subpoena, seeking a very narrow range of documents having to do with correspondence between one company and another with respect to that particular bone cement formula. So there's the first difference between the two cases, that's a much more narrow request. I won't go through all the facts, but the Court laid out the pitfalls, as I said, that I think are present here.

One, the Court recognized this danger of unfairness that we have here where one party gets a trove of documents from the United States and brings them back and the another party doesn't have the same discovery opportunity. I think that's present here.

The court in Kulzer said it wasn't present there. The Court in Kulzer also noted that the applicant had no opportunity to get the same discovery in Germany, but I think that's shown here that there is an opportunity to get some documents at least in Korea, it's just that Sharp hasn't availed themselves of that opportunity. Another pitfall identified by the Kulzer Court that I think is present here is that the foreign court might get more documents than it actually wants. Judge Posner's opinion

is one of the ones that talks about the danger of swamping a foreign court with unwanted discovery. And Judge Posner says it's not a real danger there because the courts can control and just refuse to admit whatever documents it doesn't want. I don't know that the Korean court has the same control here. In fact, Sharp has said in its papers that there are very lax rules of admissibility in Korea. So I think that's a particularly acute problem and a pitfall that's particularly present here in this case that wasn't in Kulzer.

Just let me take a look at my notes.

The final point I'd make, your Honor, is that our confidentiality issues here are real. I don't know that we could resolve the protective order issues now and I haven't read a real proposal for resolving them yet, but I would caution -- I would say that we shouldn't be --

HON. LEGGE: Well, what do you have here? Is it a blanket confidentiality order that's been entered or do you have a lot of documents filed under seal or what's the source of the confidentiality protection that the parties now have in this case in the United States?

MR. CUNNINGHAM: There is a protective order in the United States. It says that the documents produced here were produced only for use in the this U.S. CRT MDL. It provides for the producing party to label the documents either confidential or highly confidential. In reliance on that order, the parties

produce documents and gave them the appropriate label. And as I expressed in my opening remarks, we're just concerned that confidentiality can't be maintained if these documents were brought into Korea.

MR. TALADAY: Your Honor, may I add something from that point?

HON. LEGGE: Yeah. Let me finish up with the parties first and I'll ask the other counsel present if they want to add anything.

Mr. Searby, one question just occurred to me. In the U.S. litigation, did Sharp opt out of the direct purchaser class?

MR. SEARBY: Yes, your Honor.

HON. LEGGE: And did you also opt out of the indirect purchaser class?

MR. SEARBY: I'm not as clear about the indirect purchaser class question you pose. I tend to doubt it, but I do know that we opted out of the direct purchaser class and --

MR. TALADAY: Can I clarify that?

HON. LEGGE: Counsel here thinks he has an answer.

MR. TALADAY: So neither the direct purchaser or the indirect purchaser class has been certified. That's coming up for your Honor's consideration.

HON. LEGGE: Yes, I understand.

MR. TALADAY: There have been two settlements that have

moved forward for the direct purchaser class. I'm unaware that the indirect purchaser class has moved any settlements forward.

MR. SAVERI: Rick Saveri, if I may, your Honor.

Sharp has opted out of the two settlements, and that declaration was filed and that was before your Honor this morning. Sharp has chosen not to be before us and in this venue. So I'm going to hold on. I wanted to make two points. This was one of them, your Honor. I'll hold off on that though.

HON. LEGGE: Mr. Rushing, you want to add anything?

MR. RUSHING: I just have one quick one, your Honor. I would just -- briefly going back to the burden question.

Mr. Searby is just wrong, as I explained earlier, to assert that there's no burden on Saveri at all. Obviously as our declaration reflected, we would attempt to minimize the burden to us but that it would not be possible for us to do that completely. And I think Mr. Searby -- I mean, his argument essentially treats Saveri as you would treat a vendor, and that's our point. I don't think Mr. Searby's attitude is surprising either. I think it's typical and it would be typical of the attitude of the attorneys for every other plaintiff and every other foreign jurisdiction right now. And that, you know, if this motion is granted and if Saveri becomes -- has to produce these documents, it will be one-stop shopping for these cases, the Saveri firm, and we just submit that we should not be in that position.

Secondly, Mr. Searby's point that this happens all the time with third-party direct-action plaintiffs, it does, but if you -- the order in this case, we have an order which your Honor entered regarding that very procedure, it's document number 1128 filed on April 3rd, 2012, order re discovery and case management protocol. Paragraph F of that order provides that it's the defendants, it's not the Saveri firm, it's the defendants who are to provide the direct-action folks with the documents. Again, this notion that it would be Saveri or the plaintiffs who are obligated to bring these folks up to speed is not correct.

Mr. Searby made a point about delay, but, again, that's not a reason to require Saveri to do anything there. If they subpoenaed to wrong person, they subpoenaed the wrong person. That's their problem.

HON. LEGGE: Mr. Saveri, you wanted to add something?

MR. SAVERI: Just briefly, your Honor. Two points. I find it sort of fundamentally unfair that a company takes affirmative steps not to be here. They have opted out of the direct purchaser case and filed in Korea. They've done affirmative steps not to be in this District Court. They've taken -- they do not wish to be here. Now after they filed their case in Korea, has said, Oops, we now want all the benefits of the U.S. discovery, and I think that's just fundamentally unfair, your Honor. If they wished to be here and take the benefits of the U.S. discovery, they should file a case

here and then be subject to the Court's order on how that discovery procedure conducts itself, as Mr. Rushing outlined.

So just briefly, your Honor, they have taken steps not to be in this jurisdiction and therefore I do not feel they should have the benefit of the discovery here.

The second point and as was stated by Mr. Searby, we did meet and confer and it was patently clear they have no interest in any of the plaintiff's documents, your Honor. They don't want any of the plaintiff's documents, any of the plaintiff's depositions. They want the defendants' documents. They want Samsung's documents. They want me to turn over Samsung's documents. So that's why we say the subpoena is just on the wrong party. If I want Samsung documents, I go to Samsung, your Honor. And I feel if Sharp wishes to get the defendants' documents, they should put the subpoena on one of the defendants, all of the defendants, and get the documents. They have a complete set of all the same defendant documents that I have, your Honor.

So I really feel that the subpoena is directed at the wrong party. They don't want any of our documents. They wish to have Samsung's, the Philips, the Hitachi, the Toshiba documents, and they should go to those parties for those documents, your Honor. That's all. Thank you, your Honor.

HON. LEGGE: All right. Do any other counsel present wish to comment?

MR. TALADAY: Yes, your Honor, if I could.

MR. SEARBY: Your Honor. I'm sorry, your Honor. This is Bruce Searby on the telephone. I would like to respond to a couple of remarks.

HON. LEGGE: Well, I will give you that chance. I'll give you the opportunity to close here, but I'm just asking whether the other defense counsel who have been attending the hearing wish to make a comment.

MR. TALADAY: Your Honor, John Taladay on behalf of Philips. I'll make a few comments to clarify some factual misperceptions which apply to Philips as well as some of the other defendants. If I misstate them, they can certainly clarify.

Your Honor, we are a moving party here. We've joined in this motion to quash. If you look at footnote one of the motion, you'll see that we have, all of defendants present have and I believe every defendant in the case has, so we certainly endorse the arguments that Mr. Cunningham has made.

Secondly, your Honor, Philips and Philips entities are not a party to the litigation in Korea. None of our subsidiaries are parties to the litigation in Korea. Mr. Searby mentioned LG/Philips displays, which was a joint venture formed in 2001 in which Philips and LG were shareholders. We disposed of our last share, remaining shares in that entity in 2006 and have had no relationship to that entity prior even as a

shareholder. So we are not a party to that case.
That has one implication I would mention, your Honor, with respect to the protective order. If your Honor concludes to allow the subpoena, we would urge you not to, we would be in a position as a nonparty to that case. I don't know who the defendants are. I don't know who the parties are in that case. I have no means of monitoring what happens to our documents set in that case. I have no means of knowing whether the parties who might sign that protective order are subject to the jurisdiction of this court, which means I have no idea whether I have a remedy if the protective order is violated. So should you conclude that it's proper to proceed with the subpoena, we would at least reserve, your Honor, on whether we are proper parties for whom to produce documents.
And if I can be permitted one observation on the merits, your Honor.
HON. LEGGE: Yes.
MR. TALADAY: If I have heard Mr. Searby properly, and he'll correct me if I haven't, Sharp has never actually formally requested documents before the Korean court. I believe Mr. Searby said that Sharp's Korean counsel opined that the Korean court would not produce the documents; I think in the record you'll find the words it would be a probably futile effort, and I would find it, your Honor, a question of some concern if United States courts were to become the court of

first instance for seeking discovery in foreign proceedings when the foreign procedure had not even been attempted.
HON. LEGGE: Okay. Any other counsel wish to be heard?
MS. MAYO: Your Honor, on behalf of LG, we agree with Mr. Taladay's arguments on behalf of Philips and point out that we were also in that joint venture. LGE is not in the litigation in Korea.
HON. LEGGE: You parties need not just adopt what others have said. I assume that counsel for defense has been speaking on behalf of everybody. So unless there's something to add, I think we should conclude your participation. Thank you.
Mr. Searby, you wish to conclude, sir.
MR. SEARBY: Yes, your Honor.
I think that most of the remarks of counsel I've already addressed in mind. There are a couple of things particularly relating to some of the cases. Digitechnic I want to talk about. The Digitechnic case is a more general proposition offered by counsel that in the Ninth Circuit the applicant has a burden of proof on the receptivity factor that the foreign court will receive the evidence. That is really not a fair reading of these cases, your Honor, and I urge you to read the cases In Re Application of Peter Damien Marano. However, Digitechnic -- page 3 of the brief -- of the reply brief of the defendants. If you read those cases, you'll find out that again --
HON. LEGGE: Wait a minute. Before I can read them,

I've got to get a citation. So where are you reading from that I can copy the citation?
MR. SEARBY: Page 3 of the reply brief of the defendants.
HON. LEGGE: Reply brief of defendants?
MR. SEARBY: That's correct. That's document 18. In any event, it's filed on September 17th, just a few days ago.
HON. LEGGE: I'm sorry. Give me a moment to get my hands on it. Here it is.
Where am I looking?
MR. SEARBY: You're looking at page 3 in the middle of the page it says: Within the Ninth Circuit, however, courts have generally placed the burden on the requesting party to provide facts showing that the foreign court would welcome the proposed discovery. That is just a real stretch of those cases. These cases are, first of all, unpublished District Court cases. They do not purport to analyze and discuss and formulate any rule, any burden rule. What you see in them, your Honor, is the issue of receptivity coming up, assertions by the applicant about the receptiveness of the Court, and that basically either being too weak or too unsubstantiated in that Court's opinion to outweigh all the other factors in those cases that weighed in favor of denying the application. This is really not a, quote, unquote, test. There's no Intel test as defendants say in their reply brief, a test where you have to meet each element. This

isn't what's going on with the Intel case. It's a non-exhaustive list of discretionary factors for the Court to consider and many of them are sort of interrelated, and essentially what you see in the cases is a discussion of all these factors and the Court kind of coming out one way or another based upon a very loose balancing process of discretionary factors.
And so in the Peter Damien Marano case, you have serious relevant problems about what the applicant had asked for and how it would be possibly relevant to the foreign proceeding. You have very serious burden and overbreadth problems regarding 40 different sets of documents, and these are factors that are driving the court towards not wanting to grant the application. And then there's a conclusory statement by the applicant that this is no attempt to circumvent British law and the Court doesn't buy it. It doesn't help. It doesn't outweigh the other things that are going on in the case. For the defendants then to say, Well, this establishes some sort of Ninth Circuit burden, it's a real misreading of these unpublished District Court decisions. And I ask your Honor to read that and the Digitechnic case cited by counsel to understand that point.
Digitechnic is a case that turned on delay, crazy delay by the applicant there. And nothing remotely what we have here in this case and the Court reacted very poorly to that and the applicant could not overcome the problems with his application

with an assertion that the foreign court has expressed interest in receiving the evidence. It didn't do it for the Court there, which saw big problems with granting that application. Essentially it felt like it was not a proper use of the Court's time to come to the rescue of this party that had engaged in such incredible delay.

And, finally, the Intel case. It's stands for the proposition, your Honor, which is pivotal to this case here. That if one tribunal's discovery limits do not necessarily signal objection to aid from the United States Federal Courts in that a foreign tribunal's reluctance to order production of materials has no necessary correlation with a resistance to receiving and considering evidence gathered here pursuant to 1782, and that's the Intel case.

So I wanted to point out those facts about the case law and then I want to quickly respond to Mr. Saveri's point about how Sharp has opted out and does not wish to be in the Northern District of California in that litigation.

Well, you know, Sharp has opted out. The entire point of opting out is to maintain the possibility of filing your own lawsuit as a direct purchaser. Sharp hasn't done that yet, but the entire point of writing an opt-out declaration or letter is precisely to preserve your ability to be there with you all in the CRT case as a direct purchaser plaintiff. So it's really neither here nor there. You know, if we opt out and we don't

file any cases or we do, it doesn't really matter because what we're here about on this hearing is Korea. It's about a different volume of commerce that doesn't touch the United States and it's about a case that we really did file in 2010, that it needs evidence to go forward and the Court there is waiting for evidence to go forward. That's what this is about and we cannot go forward without evidence. We need the evidence here because we cannot at the moment pursue it there and all of the defendants' ideas about how we should go about doing that, basically fall flat and they're not real, they're not real genuine options for my client.

So the defendants and Mr. Saveri are going to have us do a runaround trying to do anything but lay our hands on what is already sitting there, and this can go on for a very long time or your Honor can recognize that we meet all the statutory requirements and that there is no basis for quashing the subpoena in the Intel factors and be done with this rather than sending us traipsing in after all the different coconspirators who participated in the glass meetings with separate applications. That is not an efficient use of this Court's time or anyone else's.

Again, if your Honor wants to talk about the protective order, I'm happy to explain in detail how we have charted a course for protecting those confidentiality interests. Paul Weiss is committed to working with our client and with Korean

counsel and with witnesses, opposing counsel, whoever, to ensure that these documents' confidentiality is maintained, and we can work that out. There's no reason, as counsel suggested, to think we can't.

Thank you, your Honor.

HON. LEGGE: All right. Thank you, Mr. Searby, and thank you to counsel present. I think it was an excellent presentation. I'm not going to be making any ruling at this time. I feel I must go back and do quite a bit of reading. So the matter, the motion, both motions, I should say, more specifically the defendants' motion to quash the subpoena and Sharp's motion to compel are taken under submission as of today.

So thank you all very much and we will be off the record at this time.

(Proceedings concluded at 4:10 p.m.)

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO)

I, Ruby Sanchez, a Certified Shorthand Reporter, do hereby certify:

That said proceedings were taken before me at the time and place therein set forth and were taken down by me in shorthand and thereafter reduced to computerized transcription under my direction and supervision;

I further certify that I am neither counsel for, nor related to, any party to said proceedings, nor in any way interested in the outcome thereof.

In witness whereof, I have hereunto subscribed my name.

Dated: October 3, 2012

Ruby Sanchez
CSR No. 12971, RPR

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